to do so unless he, the sheriff, was indemnified. Counsel submits that it is clear that the sheriff is unwilling to sell.

Counsel for the plaintiff addressed the court at length on the question whether the equity of redemption has been destroyed or not. His argument is shortly this. It is true that the mortgagee has sold the properties of the defendant by public auction but until the sale is completed by conveyance the equity of redemption has not been destroyed but only suspended and the sheriff should have sold the equity of redemption when he was requested to do so by the plaintiff. In any case the sheriff should have sold the properties subject to the mortgage as the sale by the mortgagee is void as against the sheriff under O. XLI r. 7.

Now what does the sheriff say? The contention of the sheriff is that what was seized by him which belonged to the judgment debtor was the equity of redemption. He submits that on the English authorities cited by him the equity of redemption came to an end on the day the property was sold by auction, that is when the contract of sale was entered into. He further submits that there was no alienation of the property seized within the meaning of O. XLI r. 7. The property seized, he says, was the equity of redemption and the equity of redemption was not alienated. What happened was that the mortgagee sold the legal estate which was vested in him and the equity of redemption just came to an end. In any case, says the sheriff, O. XLI r. 7 covers only alienation at the instance of the judgment debtor himself and has no application where the mortgagee is relying on his statutory power of sale. The sheriff points out that the property was attached on the 31st December, 1965, and any sale by him could only take place after the 14th January, 1966, but by that time the sale by the mortgagee had already taken place on the 4th January, 1966. The sheriff submits that for those reasons he has nothing to sell.

It is not for me in this application to interpret O. XLI r. 7. I am only to consider whether the sheriff has shown cause. As counsel for the plaintiff says the purpose of his application is not to ask the court to adjudicate on the rights of the judgment debtor nor the rights of the vendor and purchaser at the auction sale, but to ask the sheriff the reasons for his inability or unwillingness to sell.

As I have said the complaint of the plaintiff is that the sheriff refused to sell but in the events that had happened, which the plaintiff was fully aware of, can one really blame the sheriff? It is apparent that before March, 1966, the plaintiff did not expect the sheriff to sell. The plaintiff knew in January, 1966, that the mortgagee was going to sell the properties by auction on 4th January and he raised no objection although he gave notice to the mortgagee of the judgment and the attachment. The plaintiff and the sheriff were led to believe by the mortgagee that the mortgagee was going to pay to the sheriff $60,243.36. In March, 1966, the mortgagee had a change of heart and said that he was not going to pay and that was as a result of the plaintiff refusing to release the properties to enable the mortgagee to complete the sale.

It was after this, on the 29th March, that the plaintiff wrote to the sheriff asking the sheriff whether the latter was aware that under O. XLI r. 7 the sale by the mortgagee was void as against the sheriff and thereafter insisted that the sheriff should sell. The sheriff found himself in a dilemma. What was he to do? He drew the attention of the mortgagee to the plaintiff's letter of the 29th March and to O. XLI r. 7. The mortgagee maintained that the equity of redemption had been destroyed even before the writ of execution was issued. Correspondence passed between plaintiff's solicitors and the sheriff and the mortgagee's solicitors on the question. After careful consideration of the matter the sheriff came to the conclusion that he could not sell without opening himself to a claim for damages so he asked the plaintiff to indemnify. It seems to me that the sheriff holding the view that he has nothing to sell, a view which I must say is not without merit, is quite justified in asking the plaintiff for an indemnity if the plaintiff wants him to sell. As the sheriff said he could not do things blindly without considering the full implications of his act.

It seems to me that instead of insisting that the sheriff should sell the plaintiff should take steps to set aside the mortgagee's sale if he is convinced that the sale of the mortgagee is void under O. XLI r. 7.

In my view the sheriff has shown good cause why he did not sell the properties seized.

Cause shown.

Solicitors: *Chung & Co.*

CHIEF ASSESSOR, PROPERTY TAX v. TOWN AND CITY PROPERTIES LTD.

[O.C.J. (Winslow J.) December 9, 1966]

[Singapore — District Court Appeal No. 5 of 1966]

Property Tax — Company owning all shares in subsidiary companies — Subsidiary companies owners of land — Notice of assessment should have been sent to subsidiary companies — Assessment of land on which buildings are in course of erection — Revision of annual value — Capital value of properties certified in prospectus — Meaning of annual value — Property Tax Ordinance, 1960, s. 17(2).

In this case the chief assessor appealed against the decision of the Valuation Review Board which was to the effect that certain properties could not be assessed to property tax under the provisions of section 17(2) of the

Property Tax Ordinance, 1960. Most of the properties were owned by subsidiary companies in which the respondents held all the shares. It was argued *inter alia* that the notices of amendments should have been sent to the subsidiary companies as the respondents were not the owners of the properties. It was also contended that (a) there was no provision in the Ordinance for the assessment of buildings in the course of construction (b) that where property is rent controlled and vacant the annual value must be tied to the standard rent of the premises.

Held: (1) the respondents were not the owners of the properties owned by the subsidiary companies and therefore the notices of amendments should have been sent to the subsidiary companies;

(2) the Property Tax Ordinance, 1960, did not contain any specific provision relating to land on which buildings were in the course of erection, but the ordinance has since been amended by the Property Tax (Amendment) Act, 1965 which came into force on the 1st January, 1966 and which has removed the doubt that existed prior to it.

(3) where property is rent controlled and vacant and no material change has been made to it the annual value must be tied to the standard rent of the premises;

(4) where property was bought at a price which coincides with the valuation set out in the prospectus of the company, its annual value should be 5% of the capital value.

Cases referred to:—

(1) *Potts Executors* v. *Inland Revenue Commissioners* [1951] 1 All E.R. 76 at p. 81.

(2) *Greenwood* v. *F. L. Smidth & Co.* [1922] 1 A.C. 417 at p. 423.

(3) *Alexander Tennant* v. *Robert Sinclair Smith* [1892] A.C. 150 at p. 154.

(4) *Attorney-General* v. *Milne & Anor.* [1914] A.C. 765 at p. 781.

(5) *Hennell* v. *Commissioners of Inland Revenue* [1933] 1 K.B. 451 at p.p 421 and 428.

(6) *EBBW Vale Urban District Council* v. *South Wales Traffic Area Licensing Authority* [1951] 2 K.B. 366.

(7) *Port of Spain Corporation* v. *Gordon, Grant & Co. Ltd.* [1955] A.C. 389.

DISTRICT COURT APPEAL.

Amarjit Singh Verrick for the appellant.

Mary Lim for the respondents.

Cur. Adv. Vult.

Winslow J.: This is an appeal by the chief assessor against the decision of the Valuation Review Board delivered on 12th October, 1965 which was to the effect that certain categories of properties hereinafter described could not be assessed to tax under the provisions of section 17(2) of the Property Tax Ordinance (No. 72 of 1960) (hereinafter referred to as "the Ordinance").

It may be convenient to categorise the properties concerned as follows:—

Category A

Land in the course of development upon which buildings are in the course of erection at Stamford Park and Dunearn Road, totalling approximately 52 acres, the capital value of which was certified by Mr. Kiong Chai Woon, Licensed Appraiser and Auctioneer, to be $2,969,076.50 on 14th August, 1963. This land is owned by Stamford Park Ltd. (a wholly owned subsidiary of the respondent company).

Category B

(i) 13 and 15 Scotts Road (owned by Asia Holdings Ltd.)

(ii) 38 and 40 Cairnhill Road (owned by Greater Land Enterprises Ltd.)

(iii) 7 to 17 (odd) Tanglin Road (owned by Asia Holdings Ltd.)

(iv) 21 Cuscaden Road (owned by the respondents),

the capital values of which have been certified by licensed appraisers and auctioneers on 14th August, 1963 as set out in the respondents' prospectus (Exhibit D1). It should be noted that these properties are rent controlled.

Category C

(i) Land at Sommerville Estate off Holland Road, 6½ m.s. (owned by Greater Land Enterprises Ltd.),

(ii) 23A and 24 Thomson Rise Estate (owned by the respondents).

The capital values of these properties have all been certified as set out in the prospectus. It is common ground that these lands are occupied by squatters some of whom are said to be paying property tax.

It should be noted that the owners of the property in Category A and the first three of the properties set out in Category B and the first of the properties in Category C are owned by companies which are wholly owned subsidiaries of the respondent company.

After the prospectus had been made public the chief assessor immediately became aware that the respondents were about to embark upon revolutionary development projects affecting these properties, amongst others, which were described in glowing terms in the prospectus. Whilst it may be generally open to question how far any prospectus can accurately and estimably describe the worth of properties to which it refers, the fact remains that the chief assessor had, in front of him, certificates by licensed appraisers which did not appear to him to be mere "puffs" designed to attract an investing public. How far these valuations can be accepted to represent the true estimated value of properties for the purposes of assessment of property tax is something which probably the valuers did not then have in mind. They were making reports to the respondents of the value of these properties knowing that these would no doubt be passed on to the public — but what section of the public, one may ask; that

section which has money to burn or that section which invests cautiously? It is difficult to avoid the conclusion that these valuations were, at least subconsciously, exaggerated to serve the purpose for which they were intended i.e. to attract buyers of shares in the respondent company which obviously expected rich returns after getting safely off the "launching pad". The "launching pad", so to speak, was initially the prospectus.

Unfortunately for the respondents, before the project could really "take off", the chief assessor, in purported pursuance of his powers and his undoubtedly vigilant tax-gathering propensities, served notices on the respondents of his intention to amend the valuation list in respect of these properties by relating the new annual values to the values shown in the prospectus.

The respondents objected to the proposed amendments to the chief assessor without avail and accordingly took their appeal against the chief assessor's decision to the Valuation Review Board before whom the matter was argued by Mr. J. M. Carter for the respondents and Mr. R. M. Berriman for the chief assessor. The board decided that the chief assessor had no jurisdiction to increase the annual values of the properties in question.

The reasons given by the board for their decision were as follows:—

With regard to category A the board held—

(i) "that there is nothing in the Property Tax Ordinance which provides for the annual value to be determined on the prospectus value of a property.

(ii) Again, there is no provision in the Ordinance whereby buildings in the course of erection can be assessed."

The board then went on to express the view that, if an owner becomes bankrupt, land with uncompleted structures on it is completely valueless unless a new purchaser can be found to complete the project. They then proceeded to compare the situation with that of unoccupied buildings on which a refund of tax can be obtained and came to the conclusion that where no income is obtained no tax is leviable. The soundness of the latter conclusion is, in my view, questionable.

With regard to category B the board were of the opinion that the buildings in question were all vacant and had undergone no change whatsoever. The board again made the analogy with the case of unoccupied houses on which a refund of tax can be made and came to the conclusion that the chief assessor had no jurisdiction to raise the annual values of the said properties. The board were also impressed by the argument that the properties are rent controlled.

With regard to category C the board came to the conclusion that there should be separate annual values for those portions of the lands concerned which are capable of development, portions that are not capable of development and those portions on which stand houses whose tenants are protected by the Control of Rent Ordinance, some of whom are already paying property tax. Having said this, the board, with not unassailable logic, concluded that the chief assessor had no jurisdiction to amend the annual values of these properties as a whole.

In his appeal against the board's decision the chief assessor was represented before me by Mr. Amarjit Singh Verrick and the respondents by Miss Mary Lim and the whole scope, meaning and object of property tax legislation in this country and elsewhere were fully debated over a period of three days in relation to the circumstances of this particular appeal.

It would seem that this appeal poses questions of law which have never been raised before in Singapore. Since the Ordinance has, however, been amended (with effect from 1st January, 1966) these questions are unlikely to arise again in the same form. It was also agreed that very little help can be obtained from the English Rating Practice because the law there and its approach to rateability are quite different from the position here.

A number of preliminary objections were taken by Miss Lim on behalf of the respondents. These, she said, applied to all categories of properties.

First of all, she contended that the Ordinance, being a taxing statute, should be strictly construed and that where such a statute left any matter in doubt its construction should be favourable to the subject and that there was no room for an equitable construction to be placed on the words of a taxing statute. The following authorities were cited in support:—

(i) *Halsbury's* Laws of England, 3rd Edition, Vol. 36 p. 416 at para. 633; (ii) *Potts' Executors* v. *Inland Revenue Commissioners* [1]; (iii) *Greenwood* v. *F. L. Smidth & Co.*[2]; (iv) *Alexander Tennant* v. *Robert Sinclair Smith* [3]; (v) *Attorney-General* v. *Milne & Anor.*[4] and (vi) *Hennell* v. *Commissioner of Inland Revenue.*[5]

Secondly, she contended that the form of the notice issued by the chief assessor to the respondents was not in accordance with statutory requirements. Whereas section 17(2) of the Ordinance requires the chief assessor to give notice to the owner of the property concerned stating what amendment is considered desirable when he considers it desirable that amendments

should be made to any valuation list, the notices which were in fact issued to the respondents merely give notice to the respondents that "it is proposed to amend the valuation list . . ." Miss Lim argued that the notices should have clearly stated that the chief assessor considered it desirable to amend the list and that to say that he merely proposed to amend it was a departure from strict statutory requirements. In my opinion there is no merit in this contention. A person who considers it desirable to do a particular thing may say that he proposes to do so as he does when he makes a proposal of marriage even though he may eventually change his mind.

Thirdly, Miss Lim contended that there was no valid valuation list which the chief assessor could possibly amend because he had not declared in the *Gazette* under section 10(1) of the Ordinance that such a list would be open for inspection for a period of 28 days from the date of the *Gazette* in which such notice was given. She argued that the relevant notice in the *Gazette* (No. 1927 dated 31st August, 1962) only provides for inspection from 31st August 1962 to 27th September, 1962 and that, by virtue of section 40* of the Interpretation and General Clauses Ordinance (Cap. 2), this was not a period of 28 days but only 27. I see no merit in this contention because the notice in the *Gazette* clearly provides for inspection "from 31st August, 1962 to 27th September, 1962 *inclusive*". Furthermore, there is no evidence before me that anybody was actually physically obstructed in any attempt to make an inspection as required by law at any time during the period of 28 days from 31st August, 1962. I am also of the opinion that although section 10(1) is mandatory as to the requirement that the chief assessor shall give public notice in the *Gazette* in the month of August of each year as to the place and hours between which the valuation list for the ensuing year may be inspected, the direction in the latter part of that sub-section that the list shall be open for inspection for a period of 28 days from the date of the *Gazette* is merely directory and not mandatory. However, as I have already stated, I am not satisfied that the list was not open for inspection for a period of 28 days.

Fourthly, it was contended that the notices should have been sent to the owners of the properties concerned, not all of whom were the respondents, although the respondent company owned all the shares in the subsidiary companies who were the actual owners. On the authority of *EBBW Vale Urban District Council* v. *South Wales Traffic Area Licensing Authority* [6] at p. 370 — where Cohen L.J. said:—

"Under the ordinary rules of law, a parent company and a subsidiary company, even a 100 per cent. subsidiary company, are distinct legal entities, and in the absence of an agency contract between the two companies one cannot be said to be the agent of the other."

it seems to me that there is considerable merit in this contention and that the notices in question should have been sent to the subsidiary companies, of which they were the legal owners. There is no evidence before me of any contract of agency between the respondent company and any of its subsidiaries and in the circumstances I am unable to conclude that the respondents were agents for them. The respondents are, accordingly, not owners of such properties under the Ordinance.

On this ground therefore the appeal fails in respect of those properties in the various categories which are not owned by the respondents and sub-section (4) of section 8 of the Ordinance relating to properties of which the owner is not known cannot possibly, on the facts of this appeal, be invoked in aid of the chief assessor.

For these reasons I do not propose to express any firm view on the taxable status of the land in category A which is not owned by the respondents but by Stamford Park Ltd.

It was argued by counsel for the chief assessor that, prior to 1st January, 1966 when the Ordinance was amended by the Property Tax (Amendment) Act (No. 24 of 1965), the annual value of the land in this category could be assessed either under paragraph (b) of the first proviso to the definition of "annual value" of section 2 of the Ordinance or under the second proviso. These provisions read as follows respectively:—

Para. (b) of first proviso:

"In assessing the annual value of any house or building the 'annual value' of such house or building shall, at the option of the chief assessor, be deemed to be the annual value as hereinbefore defined or the sum which is equivalent to the annual interest at five per centum on the estimated value of the land on which such house or building stands and which is appurtenant to such house or building;"

Second proviso:

"Provided also that where land is not the site of or occupied as appurtenant to any house or building but is suitable for building purposes or is capable of being developed for such purposes, its 'annual value' for the purpose of the Ordinance shall be deemed to be the sum which is equivalent to the annual interest at five per centum on the estimated value of such land."

At one stage, I was inclined to the view that the second proviso applied despite Miss Lim's contention that, because buildings were in the course of erection on the land in question, such land could not be said to be land which was not the site of any house or building. If her argument is correct, then, a partially erected house or building is a house or building within the meaning of the second proviso. She also went

* See now section 50, Interpretation Act, 1965.

on to contend that "house or building" in paragraph (b) of the first proviso meant a completed house or building. I do not think that the legislature intended "house or building" to bear different meanings in the same definition. As I have already stated, I do not propose to give any decision on the correctness, or otherwise, of her contention as it would now be otiose in view of the fact that I have decided that the respondents are not liable as owners of the land in category A.

Counsel for the chief assessor contended that section 18 of the Ordinance supported his view. Section 18 however deals with tax in respect of a new building on which tax is payable from the date of completion of the work of erecting such building. It is silent on the question of the position with regard to the land whilst buildings are in the course of erection thereon.

It seems to me that the law, on the whole, prior to 1st January, 1966, is not entirely free from doubt on this question and that the amending Act of 1965, which came into force on that date, removed that doubt by providing a new definition of "annual value" which now empowers the chief assessor to hitch his assessment to the estimated value of the land as if it were vacant land with no buildings being erected thereon.

I now turn to the only property in category B which the respondents own i.e. 21 Cuscaden Road.

This property is rent controlled and is vacant. It has not been demolished and no material change had taken place with regard to it at the time the proposal to amend its annual value was made. The decision in the case of *Port of Spain Corporation* v. *Gordon, Grant & Co. Ltd.*[7] is, in my view, apposite so as to tie the annual value to the standard rent of controlled premises because that is the only rent which the law allows him to receive.

In my opinion the chief assessor was somewhat precipitate in his action and the conclusion of the board must therefore be maintained i.e. that the annual value cannot be raised.

With regard to Thomson Rise Estate which is the only property in category C which is owned by the respondents, I am of the opinion that the board should have ascertained the capital value of that portion of this land which is capable of development. The land and buildings, including those erected by squatters, were purchased for $700,000 which coincides with the valuation set out in the prospectus. Excluding the area of land occupied by squatters who built houses before 1947 (as appears from Exhibit P3) from the total area of Thomson Rise Estate, one should be able to arrive at the area of land which is capable of development. This area should be valued as at 20th August, 1963 and the annual value to be entered on the valuation list should be five per centum of the value so arrived at and I accordingly direct that this should be done.

The appeal partially succeeds to this limited extent. I am prepared to hear submissions on costs.

Appeal partially allowed.

GALAU & ORS. v. PENGHULU IMANG & ORS.

[A.C.J. (Williams J., Penghulu Jinggut and Anyaw, Assessors) December 10, 1966]

[Sibu — Native Court of Appeal No. 3 of 1966]

Custom — Native Custom — Temuda rights — Nature of rights — Whether affected by administrative boundaries — Whether rights can be affected by agreement.

This case arose out of a dispute as to *temuda* rights bordering along the boundary between the Sibu and Mukah district areas, which were affected by the construction of a new road. The questions referred for the determination of the Native Court of Appeal were (1) whether the administrative boundary between the Sibu and Mukah districts have any relevance in determining native customary rights over land; (2) whether a Native Court has jurisdiction to decide questions of customary rights over land by reference to an agreement between the parties or their predecessors.

Held: (1) the administrative boundary has no relevance to the creation and holding of *temuda* rights, that is rights to farm over Crown land cleared by the tribes;

(2) *temuda* rights can be affected by agreements between the parties but each case must be considered separately and on its merits.

(3) a native court has jurisdiction to decide questions of customary rights over land by reference to an agreement between the parties or their predecessors.

Cases referred to:—

(1) *Udin anak Lampon* v. *Tuai Rumah Utom* [1949] S.C.R. 3.

(2) *Sumbang anak Sekam* v. *Engkarong anak Ajah* [1958] S.C.R. 95.

(3) *Sat anak Akum & Anor.* v. *Randong anak Charareng* [1958] S.C.R. 104.

(4) *T. R. Bujang anak Guntor* v. *T. R. Tanjong anak Usat*, (Sibu Native Court of Appeal Case No. 2 of 1966).

NATIVE COURT APPEAL.

Chew Peng Cheng for the appellants.

Respondents in person.

Williams J.: This case has arisen out of dispute as to the *'temuda'* rights bordering along the boundary between Sibu District Area and Mukah District Area in the 3rd Division; rights which are affected it seems by the construction of a new road.

It is not clear how the matter came before the District Native Court where it was first heard but it appears that what started out as an enquiry into the rights over an individual area of